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Subject: MIG010000 - EPA preliminary review comments on pre-public notice draft general permit for CAFOs
Date: Wednesday, September 25, 2019 2:43:00 PM

Hi Sylvia and Megan –

In response to our email exchange on September 24 I am providing preliminary review comments on the PPN draft GP for CAFOs. I have reviewed the pre-public notice draft NPDES General Permit for CAFOs (referred to in the comments below as “the Permit” or “this Permit”), draft fact sheet, and draft public notice, that was submitted to EPA on August 23, 2019. Based on my review and discussions between EGLE and Region 5 held on September 5, September 17 and September 18, 2019, below are Region 5’s preliminary comments on the pre-public notice draft GP, draft fact sheet, and draft public notice.

As these are preliminary comments, EPA does intend to review subsequent versions of the Permit to assess how these comments were considered and addressed by the State.

As we discussed on September 5 and 17, I would also like to review templates for forms and reports that are specifically required by the permit. Since all templates for forms and reports are not currently available, on September 17 you shared an Excel spreadsheet listing forms and required submissions in the Permit. Upon availability or by the start of the public notice of the Draft Permit please provide either a pdf file or a website link for the following forms and required submissions identified on the September 17 Excel spreadsheet for EPA review:

- CAFO Inspection Report required in Part I.B.1.c.;
- Notification of New Field Requests;
- Daily Manure Land Application Record required in Part I.B.3.d.1.;
- Land Application summary for Previous Crop Year required in Part I.B.3.d.2.;
- CNMP Template;
- Annual Report Form for CAFOs required by Part I.B.4.d.;
- CNMP Update Form;
- CAFO Discharge Monitoring Report required in Part I.C.1.; and
- Manifest for CAFO Waste required by Part I.C.9.a..

Let me know if you have any questions regarding these preliminary comments. I would like to suggest that we schedule a time prior to the public notice of a Draft Permit to discuss any revisions EGLE plans to make or has made to the Permit in response to these preliminary comments. I look forward to working with you to resolve any issues regarding these preliminary comments.

Preliminary Comments on the pre-public notice permit:

1. 40 C.F.R. § 122.23(b)(8) and Section 323.2104(d) of Part 21 of the Michigan Administrative Code define “production area” to mean the part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. Both the federal and state definition further define “raw materials storage area” to include feed silos, silage bunkers, and bedding materials. Part II.A. of the Permit includes a definition of production area which does not conform to the definitions established in federal and state rules. The Permit excludes storage of sand that will be used as bedding from the raw materials storage area. Additionally, Part I.B.3.i. of the Permit subjects sites storing sand that will be used as bedding to non-production area storm water management requirements instead of the storage requirements and best management practices required in Part I.B.1. and Part I.B.2. of the Permit.

2. 40 C.F.R. § 122.42(e)(1)(i) requires that any permit issued to a CAFO must include a requirement to implement a nutrient management plan that contains best management practices to ensure adequate storage of manure, litter, and process wastewater. The term “process wastewater” as defined in federal rules at 40 C.F.R. § 122.23(b)(7) and in Part II.A. of the Permit includes egg wash water. Part I.B.1. of the Permit establishes conditions to ensure the permittee has adequate storage. Part I.B.1.a.1. excludes egg wash water from necessary volume design requirements that establish adequate storage. During our discussion on September 17, you mentioned that EGLE regulates discharges and land application of egg wash water under an EGLE permitting authority that is not part of your authorized NPDES program. Egg wash water generated at a large CAFO is considered process water subject to the effluent limitations established in 40 C.F.R. Part 412 and nutrient management plan requirements established in 40 C.F.R. § 122.42(e)(1). Please provide more information on how discharges and land application of egg wash water will be permitted.
3. The federal effluent limitations established for CAFOs in 40 C.F.R. Part 412 provide that CAFOs cannot discharge pollutants from the production area to waters of the United States except that pollutants in a precipitation-caused overflow may be discharged if the production area is designed, constructed, operated and maintained to contain all manure, litter, process wastewaters including the runoff and the direct precipitation from a specified rainfall event. Part I.A. of the Permit provides for no discharge except for a precipitation-caused overflow from a storage structure that meets the criteria established in Part I.B.1. of the Permit.
 - a. Part I.B.1. does not appear to account for the direct precipitation from the specified rainfall event. Part I.B.1. provides that CAFO waste storage structures must be designed, constructed, maintained, and operated to contain the total combined volume of the operational volume, the emergency volume, and the freeboard volume. Part I.B.1.a.2. of the Permit provides that the emergency volume is to be kept available to contain large rainfall events, however, this condition specifies that this volume is comprised of all production area waste generated from the 25-year 24-hour rainfall event. “Production area waste” as defined in Part II.A. does not include direct precipitation from the 25-year 24-hour rainfall event.
 - b. Additionally, Part I.B.1. does not appear to account for accumulated solids that can be present at the bottom of storage structures. The operational volume established in Part I.B.1.a.1. would be the likely volume to account for accumulated solids. Concrete storage structures, if regularly cleaned, could have little to no accumulated solids but earthen-lined storage structures, even if regularly cleaned, will often have accumulated solids. Many CAFOs in Michigan make use of the Animal Waste Management (AWM) software to estimate production of manure and size of storage structures. During the September 18, 2019 presentation of the AWM software by Natural Resources Conservation Services, EPA noted that AWM assumes zero solids accumulation in its estimates of the size of storage structures.
4. 40 C.F.R. § 122.42(e)(6) provides that a permit issued to a CAFO must require that certain procedures apply when a CAFO owner or operator makes changes to the CAFO’s nutrient management plan previously submitted to the state permitting authority. The procedures included in § 122.42(e)(6) impose a mandatory duty on the state to determine if the proposed revisions to a CAFO’s nutrient management plan are substantial or nonsubstantial, and a mandatory duty to provide the applicable notice and review of the proposed revisions. 40 C.F.R. § 122.42(e)(6)(iii)(A)-(D) identifies specific revisions to a nutrient management plan that are consider substantial revisions requiring public notice and opportunity for a hearing prior to implementation of the revisions by the CAFO. The Permit addresses revisions to nutrient management plans in two sections, Part I.B.3.a.1. and Part I.B.4.e. Part I.B.3.a.1. is specific to the addition of new land application areas, requires public notice of the new land application areas, and provides a timeline after public notice for use of the new land application areas unless otherwise notified by EGLE. Part I.B.4.e. identifies other revisions to the nutrient management plan that the State considers “significant”. These significant revisions do not appear to include the substantial revisions identified at 40 C.F.R. § 122.42(e)(6)(iii)(B)-(D), nor does the permit identify the procedures for notice and review of these significant revisions.
5. 40 C.F.R. § 412.37(a)(1)(i) requires weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to storage and

containment structures. Part I.B.2.f.1. of the Permit requires weekly visual inspections of all clean storm water diversion devices and outlets. EPA's review did not find a permit condition that specifically requires weekly inspections of runoff diversion structures and devices channeling contaminated storm water to storage and containment structures. However, Part I.B.1.c.3. of the Permit does require weekly inspections of the collection system, lift stations, mechanical and electrical systems, transfer stations, control structures, and pump stations are properly functioning associated with CAFO waste storage structures. Please consider reviewing the CAFO Inspection Report form required in Part I.B.1.c. of the Permit to ensure this form includes inspections of all runoff diversion structures and devices channeling contaminated storm water, including any storage or containment structures that only contain process wastewater such as runoff from feed storage areas or calf hutch areas.

6. 40 C.F.R. §§ 122.42(e)(2)(i)(A) and 412.37(b) require that CAFOs maintain records to document the implementation and management of minimum elements that are required to be included in a nutrient management plan under § 122.42(e)(1). Requirements for most of the minimum elements established in § 122.42(e)(1) are found in Part I.B.2. of the Permit. EPA's review of the Permit did not find a permit condition that conformed to the documentation and recordkeeping requirements established in §§ 122.42(e)(2)(i)(A) and 412.37(b) for the best management practices required in Part I.B.2.a., c., d., and e. As discussed during our September 17, 2019 conversation, EGLE may be able to include documentation and recordkeeping on the CAFO Inspection Form required by the Permit.
7. Federal regulations establish a records retention requirement in 40 C.F.R. §§ 122.42(e)(2)(i) and 412.37(c) applicable to information and records required by §§ 122.42(e)(1)(ix), 412.4, and 412.37(c)(1)-(10). The more stringent of these recordkeeping requirements is in § 412.37(c), i.e., a CAFO must maintain records on-site for a period of five years from the date they are created. The Permit requires that records be retained for five years but the Permit does not specify five years from the date the record is created. Please consider clarifying in Part I.C.12. of the Permit that records shall be kept for five years from the date they are created.
8. The Permit requires the use of the Michigan Phosphorus Risk Assessment (MPRA) tool in lieu of the Bray P1 numerical limits to determine land application rate prohibitions and restrictions. Part I.B.3.c. provides that existing CAFOs must comply with the land application rate prohibitions and restrictions using MPRA by April 1, 2021. It is EPA's understanding that EGLE will require existing CAFOs to comply with land application rates, restrictions and prohibitions in its most current nutrient management plan until revisions can be made using MPRA but, this is not clear in the Permit. Language should be added to the Permit identifying applicable land application rate prohibitions and restrictions from the effective date of the permit to either April 1, 2021 or the date a revised nutrient management plan that includes the use of MPRA is approved by EGLE, whichever is earlier.
9. Part I.B.4.d.7. of the Permit requires submission of the Land Application Summary for Previous Crop Year form as part of the CAFO's annual report to conform to the federal requirement for an annual report found at 40 C.F.R. § 122.42(e)(4)(viii). Contents of the Land Application Summary for Previous Crop Year form are established in Part I.B.3.d.2. To ensure that the contents of this form conform to the federal requirements in § 122.42(e)(4)(viii) EGLE should confirm that Part I.B.3.d.2.b. and c. require the methodology and calculations showing the actual amounts of nitrogen and phosphorus applied to each field and the amount of any supplemental fertilizer applied to each field.

10. 40 C.F.R. § 412.37(b)(6) requires that records of the date, time and estimated volume of any overflow be retained. Part I.C.1. of the Permit includes requirements for reporting and recordkeeping of overflows. EPA did not find a requirement to retain a record of the estimate volume of any overflow in Part I.C.1. of the Permit. Please confirm that the estimate volume of any overflow is a required element on the CAFO Discharge Monitoring Report required in Part I.C.1. and consider adding “estimate of the volume of any overflow” to the list of information required in Part I.C.1.a. of the Permit.
11. 40 C.F.R. § 412.37(c)(10) requires that dates of manure application equipment inspections be retained. Part I.B.3.b.6. of the Permit requires the permittee to maintain a written record of inspections and calibrations of land application equipment but this Part of the Permit does not specify that the permittee must include the date of inspection in the records. Please confirm that the date of the inspection is a required element on the Land Application Log form required by Part I.B.3.b.6. of the Permit.
12. Part I.C.6. of the Permit establishes procedures a CAFO must follow to ensure continued authorization to discharge under the Permit beyond the Permit’s expiration date if the permit expires prior to the State taking action on a CAFO’s permit application. It is EPA’s understanding from discussions with EGLE staff that Part I.C.6. is also intended to establish the procedures for obtaining coverage under the next general permit and that similar language in Part I.C.6. of the current general permit provides a similar process for submitting an application to obtain coverage under this Permit. It is not clear to EPA that Part I.C.6. of the Permit provides procedures for first-time applicants to seek coverage under the Permit. Please confirm that Rule 2196 of the Michigan Administrative Code, provides procedures comparable to the requirements to obtain coverage under a general permit found in 40 C.F.R. §§ 122.23(d)(1), 122.23(d)(2), and 122.28(b)(2)(i) – (iii) and including the public process required in 40 C.F.R. § 122.23(h)(1) or consider adding information about this process in the Permit.
13. The definition of “25-year, 24-hour rainfall event” or “100-year, 24-hour rainfall event” in Part II.A. of the Permit references a 1992 Huff and Angel source. EPA encourages the State to use the most current rainfall probability data available to establish magnitudes of rainfall events identified in Certificates of Coverage.
14. EPA recommends that Part II.D.7. include that the permittee provides right of entry to not only the Regional Administrator but also his or her designee.
15. EPA recommends that Part II.D.8. remove the requirement that all reports prepared in accordance with the Permit shall be available for public inspection at the offices of the Regional Administrator. EPA will follow the federal procedures for releasing records to the public found in 40 C.F.R. Part 2.
16. The Permit does not apply to duck CAFOs. Please consider adding duck CAFOs to the list of facilities that are not eligible for coverage under the Permit on the title page and remove ducks from the animal types listed in Part I.B.4.d.1.

17. Please consider revising the language in Part I.A.1.a. to make clear that the production area must be properly designed, constructed, operated and maintained as identified in Part I.B.1. of the Permit.
18. Please confirm that the use of the term “solid stackable manure” as used in Part I.B.1.d. is consistent with this term’s definition as set forth in Part II.A. of the Permit.

Preliminary comments on the pre-public notice draft Fact Sheet:

19. The Public Comment section of the Fact Sheet indicates that the Department is planning to hold at least two public hearings on the Draft Permit. The Fact Sheet also indicates that the Department will entertain requests for public hearings. Please clarify whether the Department will entertain requests for public hearings in addition to the two scheduled hearings.

Preliminary comments on the pre-public notice draft Public Notice:

20. Please clarify the process by which persons without access to the internet can submit comments on the Draft Permit.
21. Similar to the Fact Sheet, the Public Notice includes the announcement of two public hearings but also provides that persons may request a hearing through MiWaters. Please clarify whether the Department will entertain requests for public hearings in addition to the two scheduled hearings.

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